

WORKSHOP MATERIAL

OVERVIEW

In addition to 16.2.2 Definition revisions, there are four sections of the LUDC for which code amendments are being proposed:

ITEM 1: Title 16.7.8 Land Not Suitable for Development

ITEM 2: Title 16.8.7 Sewage Disposal

ITEM 3: Title 16.9.1.4 Soil Suitability

ITEM 4: Title 16.8.16 Lots

Item 2 includes separate memoranda for each of the three subsections within the Sewage Disposal section 16.8.7 (sewer, subsurface wastewater disposal (septic) and holding tanks). The struck-through and underlined revisions for all three subsections of 16.8.7 follow in a single-document format. Memoranda for all items have line-number references so that changes can be easily located.

GENERAL COMMENTS

- 16.7.8.1 Land Not Suitable for Development is outdated. It had not been applied as written for many years, affecting the calculation of Net Residential Acreage, which is essentially a density-control mechanism.
- To correct this problem and eliminate reference to an obsolete soil guide, the Planning Board suggests that Land Not Suitable for Development be deleted and a revised Net Residential Acreage calculation enacted.
- The outdated soil-guide was also cited in regulations governing the placement of subsurface wastewater systems. Therefore the sewage disposal and soil suitability subsections were reviewed and updated.
- A subcommittee held over 50 hours of meetings to address these issues. During this process several other problems were identified including:
 1. Subsections with more than one topic
 2. requirements in need of clarification
 3. lot-size restrictions in the soil-suitability subsection
 4. definitions in need of updating
 5. revisions necessary in order to align base-zone subsections with proposed amendments to NRA and land area calculations
- Amendments that would implement the guidance of the Comprehensive Plan have also been recommended.

Town of Kittery
Ordinance Revision Memorandum

ITEM 1

Originator(s): T. Emerson, Planning Board Chair; S. Tuveson, VC	Council Sponsor(s): J. Thomson, Chair
Council meeting date: TBD Joint Workshop Meeting: 9/08/14	Title: Land Not Suitable for Development (Current) Net Residential Acreage Calculation (Proposed)
Town code section: Title 16, §16.7 8	History: new proposal

CODE AMENDMENT (PG. 2), ENACTMENT ORDINANCE (FORTHCOMING)

1

2 PURPOSE OF PROPOSAL:

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4 This proposal would amend the Town's Land Use and Development Code, Title 16 (LUDC) which in
5 its present form does not permit the Planning Board to approve most subdivision development where
6 septic systems are required.

7

8 SUMMARY OF PROPOSAL/AMENDMENT:

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10 The proposal would amend the LUDC with regard to the calculation of Net Residential Acreage, which
11 establishes the maximum number of dwelling units allowed in a new subdivision. (Lines 60-63)

12

13 It would repeal the statutory reliance upon an outdated reference known as *The Soil Suitability Guide*
14 *for Land Use Planning in the State of Maine* and would substitute standards that comply with the
15 Comprehensive Plan. (Lines 53-54 & 108-110)

16

17 To arrive at Net Residential Acreage, the amendment would require subtracting the sum of all portions
18 of land wherein dwelling units cannot possibly be built due to wetlands, easements, burying grounds,
19 rights-of-way, etc., or where there are substantial constraints to development. In certain cases where
20 constraints are present, partial credit would be granted thus adding to the buildable net. (Lines 60-88
21 & 83-84)

22

23 JUSTIFICATION:

24

25 Absent this amendment, few new subdivision developments are likely to be approved by the Planning
26 Board. The amendment would correct this serious problem.

27

28 The current ordinance prohibits septic systems on soils identified as "poor or very poor". The outdated
29 reference classifies most land in Kittery as "poor or very poor". The amendment is necessary before
30 subdivisions requiring septic systems may go forward.

31

32 The amendment was drafted after gathering information from a panel of local soil scientists and
33 engineers and reviewing similar ordinances from other towns in southern Maine.

34

35 This amendment would implement the Comprehensive Plan's requirement to manage density, to
36 protect natural resources and features and to preserve property values. It would be fair to developers
37 and does not burden small land owners because non-subdivision projects would be subject to fewer
38 deductions under the calculation for 'minimum land area per dwelling unit.

39

40 FISCAL IMPACT:

41 None.

42

PROPOSED AMENDMENT

~~Article VIII. Land Not Suitable for Development~~

~~16.7.8.1 — Locations and Sewage.~~

~~The Planning Board may not approve portions of any proposed development that:~~

- ~~1. Are situated below sea level;~~
- ~~2. Are located within the one hundred (100) year frequency floodplain as found in the definition;~~
- ~~3. Are located on land which must be filled or drained, or on land created by diverting a watercourse, except the Planning Board may grant approval if central sewage collection and disposal system is provided;~~
- ~~4. Has any part of the development located on filled tidal wetlands;~~
- ~~5. Employs septic sewage disposal and is located on soils rated poor or very poor by the Soil Suitability Guide for Land Use Planning in the State of Maine.~~

Chapter 16.7 GENERAL DEVELOPMENT REQUIREMENTS

Article VIII. Net Residential Acreage

16.7.8.1 Net Residential Acreage Calculation

Net Residential Acreage determines the maximum number of dwelling units allowed on a parcel subject to subdivision. To calculate Net Residential Acreage the land area listed below must be subtracted from a parcel's gross area. Where land areas to be subtracted overlap, the area therein shall be subtracted once.

- A. All land located below the Highest Annual Tide elevation as published in the *Maine DEP Highest Annual Tide (HAT) levels* for the most current year.
- B. All land located within the floodplain as defined in Title 16.2, *Flood, One Hundred (100) Year*.
- C. All wetlands as defined in Title 16.2 *Wetland*, as well as vernal pools, ponds, lakes, streams and other water bodies, including fifty (50) percent of the associated setbacks described in *Other Buildings and Structures*, Table 16.9, Chapter 9 in this Title.
- D. All land located on filled tidal lands, per Title 16.2 *Tidal Land, Filled*.
- E. All land located within existing rights-of-way and other existing easements wherein dwelling units cannot be built.
- F. All land located within proposed rights-of-way including parking and travel ways. Driveways are excluded.
- G. All land isolated from the primary portion of the parcel by a road/street, existing land uses, or any physical feature, natural or manmade, such that it creates a barrier to the central development of the site and no means of access is proposed nor likely to be provided in the future. However, to demonstrate that identified isolated land may be considered developable for the purpose of this calculation, the applicant must submit a plan and supporting documentation for the Board's consideration.
- H. All land zoned commercial.
- I. All land one (1) acre or more contiguous area with sustained slopes of 20% or greater.
- J. All land identified as exposed bedrock, or soils with a drainage class of *poorly drained*, and/or very *poorly drained* as defined in Title 16.2 *Soils*.
- K. Fifty (50) percent of all land characterized as drainage class of *somewhat poorly drained*, unless public sewer is used, in which case no land area is subtracted.
- L. All land area within a cemetery/burying ground as defined in Title 16.2, including associated setback per MRS Title 13 §1371-A *Limitations on construction and excavation near burial sites*.
- M. All land within a Commercial Fisheries/Maritime Uses Overlay Zone or Resource Protection Overlay Zone not included in 16.7.8.1.A -L.

16.7.8.2 Documentation

The Net Residential Acreage calculation must be supported by verifiable information and accurate data and shown on the subdivision plan or other plan when applicable.

16.7.8.3 Residential development not subject to subdivision

The maximum number of dwelling units for residential development not subject to subdivision shall be based on minimum land area per dwelling unit defined in Chapter 2 *Definitions* of this Title.

Chapter 16.2 DEFINITIONS

Title 16.2 Definitions

Tidal Land, Filled means portions of the submerged and intertidal lands that have been rendered by human activity to be no longer subject to tidal action or below the natural low-water mark after October 1, 1975.

Soils.

1. ~~"Poorly drained soils" means soils where water is removed so slowly that the water table is at or within twelve (12) inches of the ground surface for six to nine months of the year.~~

2. ~~"Very poorly drained soils" means soils in an area where water is removed so slowly that the water table is at or within twelve (12) inches of the ground surface for nine to ten (10) months of the year.~~

~~A soil's drainage class must be determined by a Maine Certified Soil Scientist and based on the most recent Natural Resources Conservation Service Supplemental Key for the Identification of Soil Drainage Class that reflects the Maine Association of Professional Soil Scientists, Key to Drainage Classes.~~

Cemetery and Burying Ground: A private or public place set apart for the interment of the dead. In the absence of an apparent boundary, i.e., fence, stone wall, survey markers, survey plan, or information from the Kittery Historical and Naval Society or other reliable historic sources, the perimeter of the interment area is determined by starting with a 10-foot distance from existing tombstones and expanded, where necessary, to form a final rectilinear area.

Net residential acreage means the land area identified for regulatory purposes as developable and is means the gross available acreage less minus the area required for streets or access and less the areas of any portions of the site which are unsuitable for development land area identified as outlined in Article VIII of Chapter 16.7 Net Residential Acreage. The Net Residential Acreage Calculation is used to determine the maximum number of dwelling units allowed on a parcel subject to subdivision.

Minimum land area per dwelling unit.

Minimum land area referenced in Chapter 3, Article II Zoning Definitions, Uses, Standards of this Title means the gross area of a parcel not subject to subdivision minus the land area listed below. Where land areas to be subtracted overlap, the area therein shall be subtracted once. For land area subject to subdivision see 'Net Residential Acreage'.

- A. All land located below the Highest Annual Tide elevation as published in the Maine DEP Highest Annual Tide (HAT) levels for the most current year.
- B. All wetlands as defined in Title 16.2 Wetland, as well as vernal pools, ponds, lakes, streams and other water bodies.
- C. All land located on filled tidal lands, per Title 16.2 Tidal Land, Filled.
- D. All land located within existing rights-of-way and other existing easements wherein dwelling units cannot be built.

Chapter 16.3 LAND USE ZONE REGULATIONS

Article III. Zone Definitions, Uses, Standards

16.3.2.1 Residential – Rural R-RL.

D. Standards

2. Dimensional Standards:

Minimum land area per dwelling unit	40,000 square feet*
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*As per Chapter 16.2 definition of ~~net residential density~~ minimum land area per dwelling unit except to exempt properties which are unable to meet the square feet required for a single family dwelling unit, provided the lot was conforming prior to the date of this enactment October 25, 2012. ~~(Ordained 9/24/12; effective 10/25/12)~~

16.3.2.2 Residential – Suburban R-S.

D. Standards

2. Dimensional Standards:

Minimum land area per dwelling unit*	
without public sewage disposal	40,000 square feet
with public sewage disposal	30,000 square feet

unless reduced in accordance with
Note A.

*As per Chapter 16.2 definition of ~~net residential density~~ minimum land area per dwelling unit except to exempt properties which are unable to meet the square feet required for a single family dwelling unit, provided the lot was conforming prior to the date of this enactment October 25, 2012. ~~-(Ordained 9/24/12; effective 10/25/12)~~

16.3.2.3 Residential - Kittery Point Village R-KPV.

D. Standards

2. Dimensional Standards:

Minimum land area per dwelling unit 40,000 square feet*

*As per Chapter 16.2 definition of ~~net residential density~~ minimum land area per dwelling unit except to exempt properties which are unable to meet the square feet required for a single family dwelling unit, provided the lot was conforming prior to the date of this enactment October 25, 2012. ~~-(Ordained 9/24/12; effective 10/25/12)~~

16.3.2.4 Residential – Urban R-U.

D. Standards

2. Dimensional Standards:

Minimum land area per dwelling unit 20,000 square feet*

*As per Chapter 16.2 definition of ~~net residential density~~ minimum land area per dwelling unit except to exempt properties which are unable to meet the square feet required for a single family dwelling unit, provided the lot was conforming prior to the date of this enactment October 25, 2012. ~~-(Ordained 9/24/12; effective 10/25/12)~~

16.3.2.5 Residential - Village R-V.

D. Standards

2. The following space standards apply:

Minimum land area per dwelling unit 4,000 square feet*

*As per Chapter 16.2 definition of ~~net residential density~~ minimum land area per dwelling unit except to exempt properties which are unable to meet the square feet required for a single family dwelling unit, provided the lot was conforming prior to the date of this enactment October 25, 2012. ~~-(Ordained 9/24/12; effective 10/25/12)~~

16.3.2.6 Residential- Rural Conservation R-RC

D. Standards

2. The following dimensional standards apply:

Minimum land area per dwelling unit 80,000 square feet*

*As per Chapter 16.2 definition of minimum land area per dwelling unit except to exempt properties which are unable to meet the square feet required for a single family dwelling unit, provided the lot was conforming prior to October 25, 2012.

Chapter 16.8 DESIGN AND PERFORMANCE STANDARDS – BUILT ENVIRONMENT

16.8.11.5 Application Procedure

All development reviewed under this Article is subject to the application procedures in Chapter 16.10, Development Plan Application and Review, and the following:

A. In addition to the requirements of Chapter 16.10, the following are required at submittal of the Sketch Plan:

1. Calculations and maps to illustrate:

a. proposed dimensional modifications and the dimensional standards required in the zone in which the development will be located;

b. ~~non-buildable area (land not suitable for development as defined in Article VIII of Chapter 16.7)~~ All land area identified in Title 16.7.8.1 Net Residential Acreage; and

c. ~~net residential acreage and Net Residential Density; and~~

d. open space as defined in Section 16.8.11.6.D.2 of this Article.

Town of Kittery Ordinance Revision Memorandum

Originator(s): T. Emerson, Planning Board Chair, S. Tuveson, VC	Council Sponsor(s): J. Thomson, Chair
Council meeting date: TBD Joint Workshop Meeting: 9/08/14	Title: Sewage Disposal (Sewer only)
Town code section: Title 16, §16.8.7 (Sewer only, proposed as 16.8.7.1)	History: Amendment

ENCLOSURES: CODE AMENDMENT (PG. 5) AND ENACTMENT ORDINANCE (FORTHCOMING)

PURPOSE OF PROPOSAL:

The proposal would amend 16.8.7.1, currently titled Sanitary Sewer and Septic Disposal to comply with Kittery Town Charter Section 2.14. The charter requires that there be only one topic per ordinance. Items related to sewer would be consolidated in 16.8.7.1. Subsurface wastewater disposal regulations would become 16.8.7.2. (See separate memorandum)

Revisions align Town Code Title 16 with Title 13 (Public Services/Sewer) and clarify the waiver process.

SUMMARY OF PROPOSAL/AMENDMENT:

Section 16.8.7.1.A (lines 153-156). This provision would define sewer hook-up requirements for individual structures, as well as for subdivisions, in order to clarify and codify what is current practice.

Section 16.8.7.1.E (lines 173-179). This provision would permit a developer to request a waiver from the mandatory sewer hook-up requirement should conditions make it infeasible to do. Guidelines for the request and for the Board's deliberations are described.

JUSTIFICATION:

- These amendments would make sewer hook-up guidelines clearer and easier to find for both developers and owners of single structures with sanitary facilities.
- Rules governing sewer hook-ups for individual structures would be added to Title 16. The additions would align with and refer readers to Title 13 requirements.
- Clarifying the process by which a developer may request a waiver from the requirement to hook-up to the Town sewer system would ensure that all requests are treated equitably.

FISCAL IMPACT: None

Town of Kittery Ordinance Revision Memorandum

Originator(s): T. Emerson, Planning Board Chair; S. Tuveson, VC	Council Sponsor(s): J. Thomson, Chair
Council meeting date: TBD Joint Workshop Meeting: 9/08/14	Title: Sewage Disposal (Subsurface wastewater disposal only)
Town code section: Title 16, §16.8.7 (Subsurface Wastewater Disposal System, proposed as 16.8.7.2)	History: Amendment

ENCLOSURES: CODE AMENDMENT (PG. 5) AND ENACTMENT ORDINANCE (FORTHCOMING).

PURPOSE OF PROPOSAL:

MRS 30-A §4352 requires that "a zoning ordinance must be pursuant to and consistent with a comprehensive plan". This proposal contains amendments that would implement Kittery's Comprehensive Plan in many significant ways.

It would also eliminate a reference to an outdated soil manual that restricts the siting of subsurface wastewater disposal (SWD) systems in a manner that does not reflect modern soil science or best practices.

The proposal would bring this section into compliance with Town Charter section 2.14, which requires a single topic per ordinance.

SUMMARY OF PROPOSAL/AMENDMENT:

Section 16.8.7.2.A (lines 204-205) would prohibit SWD systems in subdivisions with four or more lots or dwelling units.

Section 16.8.7.1.C (lines 190-191) would be deleted. This subsection limits septic use based on the outdated *Soil Suitability Guide*.

Section 16.8.7.2.E.3 (lines 259-265) would increase the depth of soil required for passing test pits by six (6) inches, instead of mandating prohibitively-expensive advanced pretreatment for all new SWD systems.

Section 16.8.7.2.D.1 (lines 226-228) would permit current soil-depth requirements to be followed where a replacement SWD system, with the same capacity as the original, cannot meet the newer standards.

Section 16.8.7.2.F (lines 267-269) would require advanced pretreatment in new construction that is within 100 ft. of porous sand-and-gravel aquifers. There are only two small sand-and-gravel aquifers in Kittery, both are in the vicinity of Cutts Ridge.

Section 16.8.7.1.G.2 (line 223) would be removed. Ordinances governing sewer connections and holding tanks would become separate subsections.

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69 JUSTIFICATION:
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- 71 * Proposed amendments are pursuant to and consistent with the Kittery Comprehensive
72 Plan. They would:
73
- 74 * Steer development to areas with Town services. (Comp. Plan p.25, p.125, p.126, p.127)
75
- 76 * Discourage intensive development in areas not served by public water and sewerage.
77 (Comp. Plan p.127)
78
- 79 * Help prevent overbuilding in any single year, thereby managing growth in a manner
80 consistent with the Town's ability to absorb it. (Comp. Plan p.25, p.125)
81
- 82 * Prevent overbuilding in areas designated for low growth while helping to preserve rural
83 character and open space. (Comp. Plan p.125, p.209)
84
- 85 * Protect sensitive environmental resources such as groundwater, wetlands, watersheds and
86 sand-and-gravel aquifers (Comp. Plan pp.43-44, pp.62-64, p.125)
87

88 In addition:
89

- 90 * These amendments would help manage density without decreasing the value of currently
91 divisible parcels.
92
- 93 * Requiring deeper soil for passing test pits ensures greater separation between a SWD
94 system and the water table or bedrock. This improves the filtering of effluents. Although no
95 current SWD system can filter excreted pharmaceuticals or all household chemicals, better
96 soil filtration would provide greater protection from nitrogen and phosphorous
97 contamination, called "nutrient pollution", of our groundwater, watersheds and wetlands.
98 Soil scientists confirmed the value of this strategy.
99
- 100 * The proposal would not create a disincentive for the routine replacement of old or failing
101 SWD systems. Such routine replacements would be held to less-stringent standards than
102 those for new systems and systems being enlarged due to expanded use.
103
- 104 * Removing the outdated soil manual reference allows current best practices to be employed
105 when siting SWD systems. This protects the Town's interests and the applicant's.
106
- 107 * Removing other topics from this subsection would make SWD regulations less confusing.
108

109 FISCAL IMPACT: None

Town of Kittery Ordinance Revision Memorandum

Originator(s): T. Emerson, Planning Board Chair; S. Tuveson, VC	Council Sponsor(s): J. Thomson, Chair
Council meeting date: TBD Joint Workshop Meeting: 9/08/14	Title: Sewage Disposal (Holding tanks only)
Town code section: Title 16, §16.8.7 (Holding tanks only, proposed as 16.8.7.3)	History: Amendment

ENCLOSURES: CODE AMENDMENT (PG. 7) AND ENACTMENT ORDINANCE (FORTHCOMING).

PURPOSE OF PROPOSAL:

This proposal would create a new statute for holding tanks in compliance with Kittery Town Charter section 2.14.

It would also allow holding tanks to be installed at municipal facilities in the Commercial Fisheries/Maritime Uses Overlay Zone.

SUMMARY OF PROPOSAL/AMENDMENT:

Section 16.8.7.3.B.3 (lines 291-292) This provision would permit the installation and use of holding tanks at municipal facilities only.

Section 16.8.7.3.B.3.b) (lines 297-300) This provision would mandate an inspection, maintenance and pumping-out program for the holding tanks, and would specify responsibility for implementing same.

Section 16.8.7.3 (lines 272-275) This provision would include (by reference) the Model Holding Tank Ordinance of the State of Maine Subsurface Wastewater Rules, which would be modified to include local information and restrictions.

JUSTIFICATION:

- This proposal would amend ordinances to conform with the Kittery Town Charter 2.14. The holding tank ordinance will become a separate subsection, 16.8.7.3.
- The proposal is necessary to permit the installation of a holding tank as part of the Boating Infrastructure Grant (BIG) project at Pepperrell Cove. A holding tank at the marina would encourage boaters not to dump effluents at sea, thus protecting the seacoast from pollution.
- With proper enforcement, a clear protocol for implementing a monitoring, pump-out, maintenance and inspection program would provide reasonable safeguards for the system.

FISCAL IMPACT:

The cost of the holding tank would be paid out of the BIG program proceeds from the State of Maine.

148 **CODE AMENDMENT**

149 **Chapter 16.8 DESIGN AND PERFORMANCE STANDARDS – BUILT ENVIRONMENT**

150 **Article VII. Sewage Disposal**

151 **16.8.7.1 Sanitary Sewer System and Septic Disposal.**

152
153 A. An existing or new dwelling unit or structure that requires wastewater disposal must connect to town sewer
154 where sewer is within 100 feet of the property line per Town Code Title 13, Chapter 13.1 Public Sewer System.
155 Individual dwellings and structures in approved and recorded developments where town sewer becomes available
156 as described in this paragraph must connect per the requirements of Title 13, Chapter 13.1. {NEW}

157
158 B. Where town sewer is located within one thousand (1,000) feet of the property line of a commercial or industrial
159 development or a residential subdivision, the developer shall connect to town sewer per the town Wastewater
160 Services Department (WSD) specifications. The developer shall provide written certification to the Planning
161 Board from the WSD that the proposed addition to town sewer is within the capacity of the collection and
162 wastewater treatment system. {MOVED FROM 16.8.7.3}

163
164 C. Sewer mains, service lines and related improvements must be installed at the developer's expense. Service
165 lines must extend to each lot's boundary line. Connections to town sewer must be installed in accordance to this
166 Article and Title 13 Public Services in the Kittery Town Code.
167 {MOVED FROM 16.8.7.1.E}

168
169 D. Proposal and construction drawings must be approved in writing by the town Wastewater Services
170 Department. All required approvals must be secured before the start of final plan review.
171 {MOVED FROM 16.8.7.1.A & F}

172
173 E. When town sewer connection to the parcel and/or proposed lots is not feasible, the Planning Board may allow
174 individual or common subsurface wastewater disposal systems to be used in accordance with Section 16.8.7.2.
175 To determine feasibility, the developer shall submit information that considers the unique physical circumstances
176 of the property and sewer connection alternatives to conventional construction/installation techniques such as, but
177 not limited to, horizontal/directional boring and low pressure sewer. The developer's information must be
178 accompanied by findings and recommendations of the town Peer-Review Engineer. In determining feasibility, the
179 Board may not base its decision solely on additional costs associated with a sewer connection. {MODIFIED &
180 MOVED FROM 16.8.7.1.B}

181
182 A. Public sanitary sewer disposal system connections must be installed, in accordance to Article VII o Chapter
183 16.8, with proposal and construction drawings reviewed and approved in writing by the servicing sanitary sewer
184 agency. {Moved and Modified, SEE 16.8.7.1.D}

185
186 B. If, in the opinion of the Board, service to each lot by a sanitary sewer system is not feasible, the Board may
187 allow individual subsurface waste disposal, or a separate central sewage collection system to be used in
188 accordance with Section 16.8.7.4. {Moved and Modified, SEE 16.8.7.1.E}

189
190 C. In no instance may an initial installation septic disposal system be allowed in soils rated poor or very poor for
191 such purpose by the Soil Suitability Guide for Land Use Planning in Maine. {DELETED}

192
193 D. If the developer proposes individual subsurface waste disposal or central collection system and waste
194 generated is of a "significant" nature, or if waste is to be discharged, treated or untreated, into any body of water,
195 approval must be obtained in writing from the Maine Department of Environmental Protection. {DELETED}

196
197 E. Sanitary sewer disposal systems must be installed, at the expense of the developer, to the individual lot
198 boundary line. {Moved and Modified, SEE 16.8.7.1.C}

199
200 F. All required approvals of a sewage disposal system must be secured before official submission of a final plan.
201 {Moved and Modified, SEE 16.8.7.1.D}

202
203 **16.8.7.2 Subsurface Wastewater Disposal System**

204 A. Subsurface wastewater disposal is not permitted in a residential subdivision with four or more lots or dwelling
205 units.

206
207 B. The developer shall submit plans for subsurface wastewater disposal designed by a Maine Licensed Site
208 Evaluator in full compliance with the requirements of the State of Maine Plumbing Code, Subsurface Wastewater

Disposal Rules, and this Code. Subsurface wastewater disposal systems must be constructed according to the approved plan. (MODIFIED & MOVED FROM 16.8.7.2)

~~C.G.~~ All ~~first-time~~ subsurface wastewater ~~subsurface~~ sewage disposal systems must be installed in conformance with the State of Maine Subsurface Wastewater Disposal Rules and this Code. ~~The Maine Subsurface Wastewater Disposal rules require new systems, excluding fill extensions, to be constructed no less than one hundred (100) feet, horizontal distance, from the normal high water line of a perennial water body. The minimum setback distance for a new subsurface disposal system may not be reduced by variance. (Moved to item 1 below)~~ The following also apply:

1. ~~The minimum setback distance for a first-time subsurface disposal system may not be reduced by variance. (MODIFIED & MOVED FROM 16.8.7.1.G above)~~

42. Clearing or removal of woody vegetation necessary to site a first-time system and any associated fill extensions, must may not extend closer than one hundred (100) feet, horizontal distance, from the normal high water line of a water body or the upland edge of a wetland. (MODIFIED & MOVED FROM 16.8.7.1.G.1)

2. ~~Holding tanks are not allowed for a first-time residential use in the Shoreland Overlay Zone. (MOVED & MODIFIED, SEE 16.8.7.3.B.2)~~

D. Replacement of subsurface wastewater disposal systems for existing legal uses:

1. Where no expansion of use is proposed, must comply with 16.8.7.2 and Table 16.9 to the extent practicable and otherwise are allowed per the Maine Subsurface Wastewater Disposal Rules; or

2. Where expansion of use is proposed, must comply with 16.8.7.2 and Table 16.9.

(NEW)

16.8.7.2 — Design and Standards.

~~A developer must submit plans for sewage disposal designed by a Maine licensed site evaluator in full compliance with the requirements of the State of Maine Plumbing Code and/or Subsurface Wastewater Disposal Rules. (MOVED AND MODIFIED, SEE 16.8.7.2.B)~~

16.8.7.3 — Public Sewer Connection Required.

~~Where a public sanitary sewer line is located within one thousand (1,000) feet of a proposed development at its nearest point, the developer must connect with such sanitary sewer line with a main as required by the sewer department, and provide written certification to the Board from the department that the proposed addition to service is within the capacity of the system's collection and treatment system. (MOVED AND MODIFIED, SEE 16.8.7.1.B)~~

E. 16.8.7.4 Private Subsurface Wastewater Disposal Systems; on Unimproved Lots Created after April 26, 1990.

~~A. Where public sewer connection is not feasible, the developer must submit evidence of soil suitability for subsurface sewage wastewater disposal systems, i.e. test pit data and other information as required by the State of Maine Subsurface Wastewater Disposal Rules and this Code. In addition:~~

~~1. Additionally, ~~o~~On lots with a limiting factor identified as being within twenty-four (24) inches of the surface, a second site with suitable soils must be shown as a reserve area for future replacement should the primary site fail. Such reserve area is to be shown on the plan; not be built upon; and, must comply with all the setback requirements of the Subsurface Wastewater Disposal Rules and this Code. (MODIFIED FROM 16.8.7.4.A)~~

~~2.B. In no instance may a primary or reserve disposal area be permitted on soils or on a lot which requires requiring a First-Time sSystem vVariance Request from per the State of Maine Subsurface Wastewater Disposal Rules.~~

~~3.C. Test pits must be of sufficient numbers (a minimum of two) and so located at representative points within theeach disposal area (primary and reserve sites) to assureensure that the proposed disposal area system can be located on soils and slopes whichthat meet the criteria of the State of Maine Subsurface Wastewater Disposal Rules and the State Plumbing Code. Passing test pits must have a minimum of fifteen (15) inches of existing natural mineral soil above the limiting factor, except in the Shoreland and Resource Protection Overlay Zones where passing test pits must have a minimum of twenty-one (21) inches of natural mineral soil above the limiting factor. All passing and failing test pits must be shown on plan.~~

~~F. The developer shall install advanced pre-treatment to subsurface wastewater disposal systems that are located inside or within 100 feet of areas that include a sand and gravel aquifer as indicated on the Maine Department of Agriculture, Conservation and Forestry (DACF) Geological Survey Maps or determined by Maine DACF staff. (NEW)~~

271
272 **16.8.7.3 Holding Tanks**

273 This section includes by reference all information and requirements in Appendix A: Model Holding Tank
274 Ordinance of the State of Maine Subsurface Wastewater Rules, January 18, 2011 (SMSWR) with the following
275 exceptions and additions:

276
277 **A. Section 2 Definitions.**

278 "Authority" means Town Council of Kittery, York County, Maine.

279 "Municipality" means Kittery, York County, Maine.

280
281 **B. Section 4. Rules and regulations to be in conformity with applicable law.** All such rules and regulations adopted
282 by the Authority must be in conformity with the provisions herein, including Section 7 First-Time Users, State of
283 Maine Subsurface Wastewater Rules, all other ordinances of the Town of Kittery, all applicable laws, and
284 applicable rules and regulations of the administrative agencies of the State of Maine. In addition:
285 {NEW}

286
287 1. Holding tanks may not be used when a seasonal dwelling unit is converted.

288
289 2. Holding tanks are not allowed for a first-time residential use. {MODIFIED & MOVED FROM 16.8.7.1.G.2}

290
291 3. Holding tanks are allowed for functionally water-dependent uses at a municipal facility located within the
292 Commercial Fisheries/Maritime Uses Overlay Zone. {NEW}

293
294 a) The Harbormaster is the agent per the SMSWR and is responsible for monitoring tanks and scheduling
295 inspections, routine pumping and maintenance. {NEW}

296
297 b) Holding tanks must be inspected for leaks or deterioration by a state-certified professional with a
298 minimum of three (3) years of experience in pumping and inspecting septic and holding tanks. Holding
299 tanks must be inspected each April and October and otherwise as needed. Inspections must include a
300 written report submitted to the Code Enforcement Officer and the Kittery Port Authority {NEW}
301

302
303 **Chapter 16.2 DEFINITIONS**

304 **16.2.2 Definitions**

305
306 **Subsurface sewage disposal system** means a collection of treatment tank(s), disposal area(s), holding tank(s)
307 and pond(s), surface spray system(s), cesspool(s), well(s), surface ditch(es), alternative toilet(s), or other devices
308 and associated piping designed to function as a unit for the purpose of disposing of wastes or wastewater on or
309 beneath the surface of the earth. The term does not include any wastewater discharge system licensed under 38
310 M.R.S. §414, any surface wastewater disposal system licensed under 38 M.R.S. §413, §1A, or any public sewer.
311 The term does not include a wastewater disposal system designed to treat wastewater which is in whole or in part
312 hazardous waste as defined in 38 M.R.S. §13.1.

313
314 **Subsurface wastewater disposal system** means any system designed to dispose of waste or wastewater on or
315 beneath the surface of the earth. These include but are not limited to septic tanks, disposal fields, holding tanks,
316 pretreatment filters, piping, or any other fixture, mechanism or apparatus used for such purposes. This definition
317 does not include any discharge system licensed under 38 M.R.S. §414, any surface wastewater disposal system,
318 or any municipal or quasi-municipal sewer or wastewater treatment system.

319
320 **Wastewater** means any domestic wastewater, or other wastewater from commercial, industrial or residential
321 sources that has attributes similar to those of domestic wastewater. This term specifically excludes hazardous or
322 toxic wastes and materials.

323
324 **Domestic wastewater** means any wastewater produced by ordinary living uses, including liquid waste containing
325 animal or vegetable matter in suspension or solution, or the water-carried waste from the discharge of water
326 closets, laundry tubs, washing machines, sinks, dishwashers, or other source of water-carried wastes of human
327 origin.

328
329 **ENACTMENT ORDINANCE {FORTHCOMING}**

Town of Kittery

Ordinance Revision Memorandum

Originator(s): T. Emerson, Planning Board Chair; S. Tuveson, VC	Council Sponsor(s): J. Thomson, Chair
Council meeting date: TBD	Title: Soil Suitability
Town code section: Title 16, §16.9.1.4	History: Amendment

ENCLOSURES: CODE AMENDMENT AND ENACTMENT ORDINANCE (FORTHCOMING)

PURPOSE OF PROPOSAL:

The proposal would bring clarity to the law with respect to soil assessment and would codify what is current practice. It would also move lot-size restrictions to section 16.8.16 Lots.

SUMMARY OF PROPOSAL/AMENDMENT:

Section 16.9.1.4.C (lines 51-64)

This section would codify current best practices as endorsed by the Maine Association of Professional Soil Scientists.

Section 16.9.1.4.C (lines 84-94)

This section, which contains lot-size restrictions, would be deleted and moved to 16.8.16 Lots to simplify locating the information and to comply with Kittery Town Charter 2.14.

Section 16.9.1.4.E (lines 74-75)

This section would require soil reports, class A high-intensity soil surveys and soil mapping for cluster developments and other high-intensity land uses.

Section 16.9.1.4.F (lines 78-82)

This section would permit the Planning Board to grant a waiver from the above requirements for a low-intensity, non-clustered development upon the applicant's request. The Board would be required to consider the Town Peer Review Engineer's report prior to granting the waiver.

JUSTIFICATION:

- The current code lacks clarity in describing various soil assessment requirements. It is hard to understand and implement. The amendment would correct these problems.
- Small building projects will not be made to meet the same high standards that are required of high-intensity developments.
- The amendment would permit the Board to grant regulatory relief on a case-by-case basis which will save the applicant both time and money.
- The proposal would amend the ordinance to use current terminology and is consistent with the recommendations of the Maine Association of Professional Soil Scientists.

FISCAL IMPACT: None

CODE AMENDMENT

Chapter 16.9 DESIGN AND PERFORMANCE STANDARDS – NATURAL ENVIRONMENT

16.9.1.4 Soil Suitability.

A. The requirements and standards of the State of Maine Department of Environmental Protection, Department of Health and Welfare, the latest edition of the State Plumbing Code and this Code must be met.

B. All land uses must be located on soils in or upon which the proposed uses or structures can be established or maintained without causing adverse environmental effects, including, but not limited to, severe erosion, mass soil movement, improper drainage, and water pollution to surface water and groundwater, whether during or after construction. {MOVED FROM 16.9.1.4.E}

~~BC.~~ Any proposed subdivision ~~development~~ requires a soil survey report covering the development based on information from the *Maine Natural Resources Conservation Service (NRCS)*. ~~Where subsurface wastewater disposal is required and~~ Where the sSoil sSurvey for York County or information from the Maine NRCS shows soils with severe restrictions for development, a Class A h(High iIntensity) sSoils report Survey must be provided by an accredited a soils scientist, registered certified in the state of Maine, using the standards of high-intensity soil mapping as established by the Society of Soil Scientists of Northern New England The survey must be based on the Maine Association of Professional Soil Scientists Standards for Soil Survey, Revised 3/2009 or subsequent revision, must be provided. ~~In addition to evaluating soil properties, the soil scientist shall analyze and document characteristics of surrounding land and water areas, maximum groundwater elevation, presence of ledge, drainage conditions and any other data deemed appropriate by the soil scientist or required by the Planning Board. The soil scientist shall include recommendations for the proposed use to counteract soil limitations where any exist. A Class A Soil Survey must include a written Soil Narrative Report accompanied by a Soil Map that depicts soil delineations and symbols identified in the report. The Soil Map must be prepared at the same scale as that of the development plan with wetlands and floodplain depicted on both. {MOVED AND MODIFIED FROM 16.9.1.4.E}~~

D. When constructing a new dwelling unit on soils identified with severe restrictions, requiring subsurface wastewater disposal and on lots not subject to subdivision review, a Class A (High Intensity) Soil Survey is not required. However, the site's soil suitability must be assessed and documented in a soil report by a Maine certified soil scientist, a Maine certified geologist or Maine licensed site evaluator. Prior to the issuance of a Building Permit, the soil report must be submitted to the Code Enforcement Officer (CEO) and soil conditions reviewed for conformance with this Code. {MOVED AND MODIFIED FROM 16.9.1.4.E}

E. Cluster residential and cluster mixed-use, commercial or industrial development and similar intensive land uses require a Class A (High Intensity) Soil Survey by a Maine certified soil scientist. {NEW AND CURRENT PRACTICE}

F. Where non-clustered development is limited in scale and intensity the developer may request the Class A (High Intensity) Soil Survey required by 16.9.1.4.E. above be waived by the Planning Board. The Board may grant said waiver only after consideration by the town's Peer Review Engineer of the developer's explanation as to why a Class A Soil Survey is not warranted. In the event a Class A Soil Survey is not required, the site's soil suitability must be sufficiently assessed to ensure compliance with this Code. {NEW}

G. ~~Lot size determination is as follows:~~

~~1. Areas containing hydric soil may be used to fulfill twenty-five (25) percent of the minimum lot size required by this Code, provided that the non-wetland area is sufficient in size and configuration to adequately accommodate all buildings and required utilities such as sewage disposal and water supply (including primary and reserve leach field locations within required zoning setbacks).~~

~~2. Lots served by municipal water and sewer may use areas of poorly drained soil to fulfill up to fifty (50) percent of the minimum required lot size.~~

~~3. No areas of surface water, wetlands, right-of-way, or easement, including utility easements or areas designated as very poorly drained soil may be used to satisfy minimum lot sizes, except as noted above.~~

~~{MODIFIED AND MOVED TO 16.8.16 LOTS}~~

~~DE.~~ If the soil ~~report~~ classification is challenged by the applicant, an abutter, a landowner, the CEO, or the Conservation Commission, petition must be made in writing to the Planning Board. With such petition, or a

99 challenge by the Planning Board, the Planning Board shall determine whether a certified qualified soil scientist
100 should conduct an on-site investigation and at whose expense. The soil scientist shall present evidence in written
101 form to the Planning Board, which evidence forms the basis for the Board's decision.
102

103 ~~E. All land uses must be located on soils in or upon which the proposed uses or structures can be established or~~
104 ~~maintained without causing adverse environmental impacts, including, severe erosion, mass soil movement,~~
105 ~~improper drainage, and water pollution, whether during or after construction. Proposed uses requiring subsurface~~
106 ~~waste disposal, and commercial or industrial development and other similar intensive land uses, require a soils~~
107 ~~report based on an on-site investigation and must be prepared by state-certified professionals. Certified persons~~
108 ~~may include Maine-certified soil scientists, Maine registered professional engineers, Maine-certified geologists and~~
109 ~~other persons who have training and experience in the recognition and evaluation of soil properties. The report~~
110 ~~must be based upon the analysis of the characteristics of the soil and surrounding land and water areas, maximum~~
111 ~~ground water elevation, presence of ledge, drainage conditions, and other pertinent data which the evaluator~~
112 ~~deems appropriate. The soils report must include recommendations for a proposed use to counteract soil~~
113 ~~limitations where any exist. (MODIFIED AND MOVED TO 16.9.1.4.B, C & D ABOVE)~~
114

115 *ENACTMENT ORDINANCE*
116 *{FORTHCOMING}*
117

Town of Kittery Ordinance Revision Memorandum

Originator(s): T. Emerson, Planning Board Chair; S. Tuveson, VC	Council Sponsor(s): J. Thomson, Chair
Council meeting date: TBD	Title: Lots
Town code section: Title 16, §16.8.16	History: Amendment

ENCLOSURES: CODE AMENDMENT, ENACTMENT ORDINANCE (FORTHCOMING), AND PLANNING BOARD REVIEW NOTES

PURPOSE OF PROPOSAL:

This proposal would move lot-size restrictions from 16.9.1.4 Soil Suitability, and put them in section 16.8.16 Lots.

Other changes would create an incentive for the use of advanced pretreatment subsurface wastewater disposal (SWD) systems, improve ordinance clarity and prioritize items within this section.

SUMMARY OF PROPOSAL/AMENDMENT:

Section 16.8.16.3 (lines 56-63). Moves lot size provisions from 16.9.1.4 to new subsection 16.8.16.3. Under this proposal, single land divisions would no longer be subject to lot-size restrictions.

(lines 61-63) Developers would be allowed to count a substantially higher percentage of wetland to satisfy minimum lot-size requirements if they use advanced pretreatment SWD systems.

16.8.16.2.A (lines 47-49) Lot shape requirements have been modified slightly to improve clarity as was recommended by the Maine Municipal Association's legal department.

JUSTIFICATION:

- This proposal would permit small land owners to make a single land division without being subject to wetland-percentage restrictions. This is a substantial benefit to such landowners.
- The proposal would create an incentive for developers to use advanced pretreatment SWD systems, which will help protect the environment.
- The technical change of moving the provisions on lot-size restrictions to the section titled Lots will make this information easier to find, and is in compliance with Kittery Town Charter 2.14.

FISCAL IMPACT: None

CODE AMENDMENT

CHAPTER 16.8 DESIGN AND PERFORMANCE STANDARDS

Article XVI. Lots

16.8.16.1 Dimensions.

The lot size, width, depth and shape and orientation and the minimum building setback lines must be appropriate for the location of the development and for the type of development and use contemplated. The lot configuration should be designed to maximize access to solar energy for building sites with suitable orientation.

16.8.16.92 Lot Shape.

A. The ratio of lot length to width shall ~~must~~ not be more than three to one. ~~Flag-shaped lots are prohibited, and~~ ~~Other odd-shaped lots in which narrow strips are joined to other parcels in order to meet minimum lot size~~ requirements are also prohibited. (MOVED AND MODIFIED FROM 16.8.16.9.A)

B. Spaghetti-Lots Prohibited. If any lots in a proposed subdivision have shore frontage on a river, stream, brook or coastal wetland as these features are defined in Code 38, M.R.S. §480-B, none of the lots created within the subdivision may have a lot depth to shore frontage ratio greater than five to one.

(MOVED AND ONLY AMENDED SECTION NUMBER)

16.8.16.3 Lot Size Restrictions.

Lot size determination for all developments requiring subsurface wastewater disposal is as follows:
Areas containing very poorly drained soils may be used to fulfill twenty-five (25) percent of the minimum lot size required by this Code, provided that the remaining area is sufficient in size and configuration to safely and adequately accommodate all buildings and required utilities such as water supply and wastewater disposal, including primary and reserve disposal field locations, within required zoning setbacks. Where advanced pre-treatment is used in conjunction with wastewater disposal, said soils may satisfy seventy-five (75) percent of the minimum lot size. (MODIFIED AND MOVED FROM 16.91.4.C SOIL SUITABILITY)

~~16.8.16.2 Off-street Parking.~~ (MOVED AND RENUMBERED; 16.8.16.9 BELOW)

~~Depth and width of properties reserved or laid out for all purposes must be adequate to provide for off-street parking and service facilities for vehicles required by type of development and use contemplated.~~

~~16.8.16.3 Land Subdivision.~~ (MOVED AND RENUMBERED; 16.8.16.11 BELOW)

~~The subdividing of land must conform to the requirements of Chapter 16.3.~~

16.8.16.4 Double/Reverse Frontage Lots.

Double frontage and reverse frontage lots are to be avoided except where essential to provide separation of residential development from traffic arteries or to overcome specific disadvantages of topography and orientation. A planting screen easement of at least ten (10) feet, across which there may be no right of access, is to be provided along the lot lines abutting such a traffic artery or other disadvantageous use.

16.8.16.5 Side-lot Lines.

Side-lot lines must be substantially at right angles or radial to street lines.

16.8.16.6 Substantially Larger Lots.

Where a tract is subdivided into lots substantially larger than the minimum size required in the zone in which a subdivision is located, and where no covenants exist to preclude lots from resubdivision, the Board may require that streets and lots be laid out so as to permit future resubdivision in accordance with the requirements contained in these standards.

16.8.16.7 Multiple Frontages.

When lots have frontage on two or more streets, the plan and deed restrictions must indicate vehicular access to be located only on the least-traveled way.

16.8.16.8 Divided Lots.

If a lot on one side of a stream, tidal water, road or other similar barrier fails to meet the minimum requirements for lot size, it may not be combined with a lot on the other side of such barrier to meet the minimum lot size unless in conformance with Article II of Chapter 16.7.

~~16.8.16.9 Lot Shape.~~ {MOVED, MODIFIED AND RENUMBERED; 16.8.16.2 ABOVE}

~~A. The ratio of lot length to width shall not be more than three to one. Flag lots and other odd-shaped lots in which narrow strips are joined to other parcels in order to meet minimum lot size requirements are prohibited.~~

~~B. Spaghetti Lots Prohibited. If any lots in a proposed subdivision have shore frontage on a river, stream, brook or coastal wetland as these features are defined in Code 38, M.R.S. §480-B, none of the lots created within the subdivision may have a lot depth to shore frontage ratio greater than five to one.~~

16.8.16.29 Off-street Parking.

Depth and width of properties reserved or laid out for all purposes must be adequate to provide for off-street parking and service facilities for vehicles required by type of development and use contemplated.
{MOVED AND ONLY AMENDED SECTION NUMBER}

16.8.16.10 Access to Arterial Street.

Where a major subdivision abuts or contains an existing or proposed arterial street, no residential lot may have vehicular access directly onto the arterial street. This requirement must be noted on the plan and in the deed of any lot with frontage on the arterial street.

16.8.16.311 Land Subdivision.

The subdividing of land must conform to the requirements of Chapter 16.3.
{MOVED AND ONLY AMENDED SECTION NUMBER}